

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**COMMENTS OF THE NATIONAL ASSOCIATION  
OF STATE UTILITY CONSUMER ADVOCATES**

**I. INTRODUCTION**

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> submits these comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”), released October 16, 2002 (“Recommended Decision.”).<sup>2</sup> The Federal Communications Commission (“FCC”) has issued a request for comments on the Recommended Decision.<sup>3</sup> In the Recommended Decision the Joint Board responded to several issues referred by the FCC as a result of the 10<sup>th</sup> Circuit Court of Appeals remand of the FCC’s high-cost support mechanism for non-rural telephone companies.<sup>4</sup>

NASUCA believes that the Joint Board’s recommendations are an important first step in ensuring that the real rates that real consumers pay are the real test of the statutory

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<sup>1</sup> NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

<sup>2</sup> FCC 02J-2, 17 FCC Rcd 20716 (2002).

<sup>3</sup> Public Notice, DA 02-2976, 67 Fed. Reg. 71121 (2002), issued on November 5, 2002.

<sup>4</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001) (“*Qwest*”).

mandate that “consumers in all regions of the nation...have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>5</sup> NASUCA believes, however, that the Joint Board Recommendations did not go far enough in several areas and should be strengthened.

The Joint Board correctly recognized that the support mechanism for non-rural carriers will be “sufficient” if it ensures that rural rates of non-rural carriers throughout the nation are reasonably comparable to urban rates. This partially satisfies a key element of the remand from the Court of Appeals. As discussed below, the mechanism must also consider the comparability of services in addition to the rates for those services.

The remand from the court addressed the Commission’s high-cost mechanism for non-rural telephone companies. These companies are the largest incumbent local exchange carriers (“ILECs”) in the nation. They serve rural areas in the various states, yet their predominant service areas -- as signaled by the term “non-rural” -- are not rural, and indeed encompass most of the urban, low-cost areas in the states. As discussed below, the Commission must adopt definitions upon remand that recognize the characteristics of those companies.

This is particularly true because of the Joint Board’s correct assessment that the statutory requirement that the universal service fund (“USF”) be “sufficient” also means that the fund should not be more than sufficient. Providing support to areas that do not

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<sup>5</sup> 47 U.S.C 254(b)(3).

require support -- for whatever reason -- is contrary to Congressional intent.<sup>6</sup>

Another key portion of the Joint Board's Recommended Decision is the recommendation on a state inducement mechanism -- also addressing one of the court's directives. This "expanded certification process" (Recommended Decision, ¶ 51) should be further expanded, as discussed below. It should also be clear that such a certification is a condition of receiving universal service support for the non-rural carriers. Key to the certification should be a requirement for states to certify, as a condition of receiving federal high-cost funding, that without the universal service funding provided by the interstate USF, the rural rates and services of the non-rural carrier(s) within the state would no longer be reasonably comparable to urban rates.<sup>7</sup>

## **II. BACKGROUND**

The Commission must consider the Recommended Decision in the context of the statutes and case law that necessitated it. There are seven principles, found in 47 U.S.C. § 254(b), on which the Commission and the Joint Board must base universal service policies:

- Quality services should be available at just, reasonable and affordable rates.
- Access to advanced telecommunications and information services should be provided in all regions of the nation.
- Consumers in all regions of the nation, including low-income consumers and those in rural, insular and high cost areas, should have access to

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<sup>6</sup> In this respect, NASUCA opposes the proposals of non-rural ILECs presented in this proceeding that would unreasonably and unnecessarily expand the amount of federal high-cost support received by those companies.

<sup>7</sup> Just as the Commission has established a separate support mechanism for the non-rural carriers, the Commission should address state inducements for the non-rural carriers separate from inducements used for rural carriers.

telecommunications and information services that are *reasonably comparable* to those available in urban areas and at rates that are *reasonably comparable* to rates charged for similar services in urban areas.

- All telecommunications services providers should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
- Federal and state universal service support mechanisms should be specific, predictable and *sufficient*.
- Elementary and secondary schools, healthcare providers and libraries should have access to advanced telecommunications services.
- Any other principles that the Commission and the Joint Board determine to be necessary and appropriate to protect the public interest, convenience and necessity and are consistent with the Telecommunications Act of 1996 (“1996 Act”).

The Commission has adopted one additional principle: that universal service support mechanisms and rules should be competitively and technologically neutral.<sup>8</sup> The Commission’s universal service policies should strike a fair and reasonable balance among all these principles, although one principle may be important enough to trump any or all the other principles.<sup>9</sup>

### **III. THE JOINT BOARD’S RESPONSE TO THE COURT’S DIRECTIVES SHOULD BE CLARIFIED.**

#### **A. The Need to Recognize the Qualities of the Non-Rural Companies**

The Commission has adopted a different cost-evaluation methodology for the non-rural carriers than for the rural carriers: Non-rural carriers are subject to a cost

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<sup>8</sup> See *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997) (“*Report and Order*”), ¶¶ 48-49.

<sup>9</sup> *Id.*, ¶ 52.

model that uses forward-looking costs, while the rural carriers' analysis -- at least for a five year period -- continues to use embedded costs.<sup>10</sup>

This differential treatment is justified by the significant differences between rural carriers and non-rural carriers. The Rural Task Force paper on "The Rural Difference" authoritatively summarizes these differences, focusing on the characteristics of the rural carriers.<sup>11</sup>

Attached to these comments is a spreadsheet that highlights some of the characteristics of the non-rural companies. In most states, these companies' rural territory is a small part of the ILEC's operation, dominated by urban and suburban territory. In all cases, these companies are affiliates of some of the largest corporations in the country. And in all cases, these local companies produce healthy earnings for their investors.

All of these distinctions support definitions of "sufficient" and "reasonably comparable" for the non-rural carriers that tend to limit, rather than expand, the level of federal universal service support provided to the non-rural carriers. Many of these carriers clearly have the resources -- on the intrastate level and the interstate level -- to ensure that their rural rates are reasonably comparable to their urban rates, without additional support from the federal universal service fund.

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<sup>10</sup> Compare *Ninth Report and Order and Eighteenth Order on Reconsideration*, CC Docket No. 96-45, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), ¶ 2 to *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*"), ¶ 8.

<sup>11</sup> "The Rural Difference," Rural Task Force White Paper 2 (January 2000) (available at <http://www.wutc.wa.gov/rtf>); see *Fourteenth Report and Order*, ¶ 17.

**B. The Definitions of “Reasonably Comparable” and “Sufficient” Require Expansion**

*1. “Reasonably Comparable”*

The Court remanded the Commission’s definition of “reasonably comparable” as used in 47 U.S.C. § 254(b)(3) -- a definition vital to the Joint Board’s recommendation here. The Commission had defined “reasonably comparable” as within a “fair range of urban/rural rates both within a state’s borders, and among states nationwide.” The Court insisted on a more precise definition “that reasonably relates to the statutory principles.”<sup>12</sup>

In response to the Court, the Joint Board has tentatively recommended establishment of a supplemental rate review process using a rate benchmark of 135% of the national average urban rate.<sup>13</sup> Under the Joint Board’s recommendation, states with rates in high-cost areas that are at or below the benchmark would fall within a “safe harbor,” that is, the state could certify that the rates in high-cost areas are reasonably comparable without supplying additional rate information.<sup>14</sup> States with rates above the rate benchmark could seek additional federal support in order to enable comparable rates in rural areas.<sup>15</sup> In addition, states with rates below the benchmark could also seek additional federal support if they could show that other factors, such as poor service

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<sup>12</sup> *Qwest*, at 1202.

<sup>13</sup> Recommended Decision, ¶52.

<sup>14</sup> *Id.*, ¶ 49. It is important to note that the Joint Board’s recommendation for a 135% rate differential actually stands as a rejection of Verizon’s argument that rural rates that are within two standard deviations of a national mean are “reasonably comparable” to urban rates. Using the numbers from Verizon’s comments, with a national mean of approximately \$15.00 and a standard deviation of approximately \$5.35, rates up to \$25.70 -- or more than 170% of the national mean -- would be allowed. Notably, the Joint Board finds that a properly inclusive average urban rate would be \$21.84. A rate 170% of \$21.84 would be \$37.13 per month.

<sup>15</sup> Recommended Decision, ¶55,

quality or limited calling scope did not produce comparable services for the rates paid.<sup>16</sup>

NASUCA supports the establishment of a rate benchmark and the comparison of rates in urban and rural areas. However, in addressing the issue of reasonable comparability, NASUCA believes the Joint Board placed undue focus on the concepts of costs and rates. As noted above, one principal enumerated in 47 U.S.C. § 254(b) may trump the other principles, in examining the sufficiency of support or the reasonable comparability of rates, the Commission should consider all the enumerated principles, especially the quality of the service provided.

Although the Joint Board's recommendation allows states to make a case for lack of comparable service quality, NASUCA does not believe the issue of service quality receives adequate emphasis. Service quality and reasonably comparable rates go hand-in-hand for most consumers. For example, if one telephone company in a given state has rates similar to, but provides service that is worse than that provided by other telephone companies in the state, the rates are not "reasonably comparable." Neither are the services "reasonably comparable."

The availability of quality service at just, reasonable and affordable rates should be the primary factor in determining whether universal service support is sufficient. The Commission should begin addressing "broader, more wide-ranging service quality issues,"<sup>17</sup> and consider steps to improve service quality, including the withholding of federal universal service support to carriers whose service quality is found to be consistently lacking.

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<sup>16</sup> *Id.*

<sup>17</sup> *Report and Order*, ¶ 101.

Another area where the Joint Board's primary focus on rates rather than service falls short is in the failure to address local calling area issues. The use of ILEC cost comparisons fails to address the costs to consumers of limited local calling areas. And the failure of the support mechanism to ensure that the service -- including local calling scope -- in rural areas is reasonably comparable to that in urban areas falls short of the statutory requirement.

2. *"Sufficient"*

The Court of Appeals remanded the Commission's definition of "sufficient" as used in 47 U.S.C. § 254(b)(5). The Commission had determined that a system based on supporting non-rural telephone companies' wire centers where costs were greater than 135% of the national average cost was "sufficient." The Court found that the Commission had neither adequately defined "sufficient" nor justified the 135% funding benchmark. The Joint Board had recommended that the Commission define "sufficient" as "enough support to enable states to achieve reasonable comparability of rates."<sup>18</sup> NASUCA supports this finding. The Joint Board also presented what it believed to be support for the 135% rate benchmark as the basis for rate comparability.

NASUCA also supports the Joint Board's recognition that "sufficient" implies "no more than sufficient."<sup>19</sup> In the context of a support mechanism for non-rural telephone companies, this requires recognition of the characteristics of the non-rural telephone companies.

In attempting to support its original definition of "sufficient," the Commission

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<sup>18</sup> Recommended Decision, ¶ 15.

<sup>19</sup> *Id.*, ¶¶ 14, 16.



had stated: “Support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels.”<sup>20</sup> The 10<sup>th</sup> Circuit, however, disallowed this pronouncement as a definition of “sufficient,” saying that the Commission simply substituted one standard for another.<sup>21</sup> In other words, the existence of *cost* support does not necessarily mean that there will be sufficient or more than sufficient support to enable *rate* comparability. The Joint Board’s recommendations -- calling for an annual bottom-line check on the level of rates in each state -- appear to properly link the concepts of rate comparability and sufficiency.

Nevertheless, NASUCA believes that the Joint Board did not go far enough in defining “sufficiency.” In discussing the cost benchmark, the Joint Board stated: “Providing additional support merely to induce states to ensure rate comparability without determining that additional support is necessary may conflict with the principle that support be only as large as necessary.”<sup>22</sup> In order to ensure that the federal support mechanism does not produce excessive or unnecessary support, the definition of “sufficient” under the Act should take into account the financial resources that the ILEC has, particularly for large non-rural ILECs.

Before a non-rural ILEC receives federal universal service funding for high-cost support, the Commission should examine the ILEC’s rate of return. An ILEC earning a healthy overall return -- for example, in excess of 11.25% -- should not receive federal

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<sup>20</sup> *Seventh Report and Order and Thirteenth Order on Reconsideration*, CC Docket No. 96-45, 14 FCC Rcd 8078, ¶ 30.

<sup>21</sup> *Qwest* at 1201.

<sup>22</sup> Recommended Decision, ¶42.

universal service money for high-cost support. This is consistent with the Commission's philosophy that support should be provided to those areas that need it most, and would further the 1996 Act's directive that federal universal support mechanisms should not be unduly burdened.<sup>23</sup> This would also help ensure that ILEC-generated funds, and not federal support mechanisms, are being used to provide basic support in high-cost areas. Non-rural ILECs that can afford to provide quality service in high-cost areas at just, reasonable and affordable rates should not receive universal service support.

### **C. Cost Benchmarks and Statewide Averaging**

The Commission in the *Ninth Report and Order* established a support mechanism for non-rural companies based on forward-looking costs within each state as determined by the FCC's cost model. States with average costs above 135% of the national average of costs as determined to by the cost model received 76% of the amount above the 135% benchmark from the federal universal service fund. Under the FCC's non-rural support mechanism, eight states currently receive approximately \$233 million in federal high-cost support.<sup>24</sup>

The 10<sup>th</sup> Circuit found fault with several aspects of the FCC's support mechanism and remanded the *Ninth Report and Order* for further definition. The Court did not object to a cost standard, but found that the FCC had presented an inadequate justification for use of a 135% cost benchmark, and had also failed to explain how use of a 135% benchmark would enable sufficient support to produce comparable rates. The Court noted however, that if the benchmark "actually produced urban and rural rates that were

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<sup>23</sup> See 47 U.S.C. § 254(f).

<sup>24</sup> *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2003*, Universal Service Administrative Company (Nov. 1, 2002), App. HC12.

reasonably comparable... we would likely uphold the mechanism.”<sup>25</sup>

The Joint Board recommended that the FCC retain use of the 135% benchmark and statewide averaging of costs. As support for the 135% benchmark, the Joint Board cites to a “cluster analysis” of the results of the FCC’s cost model, and the fact that the 135% benchmark is close to two standard deviations from the mean of the costs produced by the cost model.<sup>26</sup> If this was all that had had been added to the record since the FCC’s Ninth Report and Order, NASUCA would not be inclined to support retention of the 135% cost benchmark. However, as explained below, because the cost benchmark is being used in conjunction with a supplemental review of rates, the Joint Board’s methodology appropriately acknowledges cost review as a part of the overall mechanism whose aim to ensure reasonably comparable rates. Regardless of the cost standard, however, it is clear that the support mechanism as a whole must result in rural *rates* that are no more than 135% of urban rates in order to be “reasonably comparable” to the urban rates.<sup>27</sup>

As previously stated, the FCC and the Joint Board are under a statutory directive to ensure reasonable comparability of rates. The 10<sup>th</sup> Circuit emphasized that any mechanism adopted by the FCC must meet this statutory requirement. The FCC and the Joint Board justify primary reliance on costs by the fact that rates are ultimately based on

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<sup>25</sup> *Qwest*, at 1202. The Court conceded, however, that establishment of any benchmark “will likely be somewhat arbitrary.” *Id.*

<sup>26</sup> Recommended Decision, ¶ 38.

<sup>27</sup> See Reply Comments of the Ohio Consumers’ Counsel, the Maryland Office of People’s Counsel, the Maine Public Advocate Office, the Texas Office of Public Utility Counsel and the Pennsylvania Office of Consumer Advocate (“State Advocates”), filed April 25, 2002, at 5-11. See also Recommended Decision, ¶ 52; *Qwest*, at 1201 (questioning whether rates 70-80% greater are reasonably comparable).

costs.<sup>28</sup> It is argued that as competition develops in all aspects of telecommunications, it is expected that rates will eventually be driven to cost. Without more, the Joint Board would be back in the same incomplete loop which the 10<sup>th</sup> Circuit found unacceptable: support of costs without any assurance that such support is sufficient to lead to the statutory goal of comparable rates.

Fortunately, the Joint Board recognized that an analysis focusing only on costs was inadequate: “[T]he Joint Board recommends that the current national benchmark be retained, supplemented by rate review to ensure comparability of urban and rural rates.”<sup>29</sup> Under the procedure recommended by the Joint Board, cost support based on the benchmark is only the starting point in determining whether rates are comparable. States are then responsible for using available federal cost support along with resources from within the state in order to achieve comparable rates in rural areas within their borders. As discussed in the next section, the states must certify annually the results of these joint efforts on rates, and may request additional support if federal cost support and state actions together are insufficient to achieve comparable rates. Thus, the required rate review acts as a final check on the operation of federal cost support and state actions to ensure that the statutory sufficiency and comparability requirements are met.

The Joint Board adopted a single 135% benchmark.<sup>30</sup> As noted by the Joint Board, a step function cost benchmark may spread the same amount of federal cost support to more states, and may deserve further consideration.<sup>31</sup> The Commission should

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<sup>28</sup> Recommended Decision, ¶¶18-21.

<sup>29</sup> *Id.*, ¶ 41.

<sup>30</sup> *Id.*, ¶ 34.

<sup>31</sup> *Id.*, ¶ 42.

fully explore the costs and benefits of such a step function benchmark in the pending comprehensive review of the rural and non-rural support mechanisms. However, the Joint Board appears to have adequately responded to the 10<sup>th</sup> Circuit’s remand in this case.

**D. The State Inducements Need to be Clarified.**

The Court faulted the Commission for failing to provide inducements for states to implement support mechanisms, even though the Commission acknowledged the importance of state programs in attaining reasonably comparable rates.<sup>32</sup> The Commission had “abstain[ed] from requiring any state action as a condition for receiving federal high-cost support....”<sup>33</sup> The Court found, however, that it was “appropriate -- even necessary -- for the FCC to rely on state action in this area.”<sup>34</sup> The Court indicated that the Commission “remains obligated to create some inducement, a ‘carrot’ or a ‘stick,’ for example, or simply a binding cooperative agreement with the states” to spur implementation of state support mechanisms.<sup>35</sup> The Court directed the Commission to develop such state inducements.<sup>36</sup>

1. Expanded State Certification

In response, the Joint Board recommends that the Commission expand the current annual certification process to require states to certify that basic service rates in high-cost areas served by eligible telecommunications carriers are reasonably comparable to a

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<sup>32</sup> *Qwest* at 1203.

<sup>33</sup> *Ninth Report and Order*, ¶ 67.

<sup>34</sup> *Qwest* at 1203.

<sup>35</sup> *Id.* at 1204.

<sup>36</sup> *Id.*

national rate benchmark.<sup>37</sup> This would involve four types of reporting:

- States whose rates fall below the benchmark and that the state considers to be reasonably comparable to the benchmark would not have to make a further showing.
- States whose rates are not below the benchmark but the state still considers them to be reasonably comparable would report either other factors that make the rates reasonably comparable or actions that the state intends to take to make the rates reasonably comparable to the benchmark.
- States whose rates are below the benchmark but the state still considers them not to be reasonably comparable could show that existing basic service is somehow lacking and must show the actions the state has taken or will take to remedy the discrepancy.
- States whose rates are above the benchmark and are not reasonably comparable must show that federal and state programs combined are insufficient to produce reasonably comparable rates and that the state has taken all available steps to remedy the situation. The Commission would then consider taking further action to achieve reasonably comparable rates in the state.<sup>38</sup>

The certification process should be expanded and clarified to more closely meet the statutory goals. First, it must be clarified that this certification is in fact a condition for non-rural carriers to receive USF “high cost” funding. In other words, the Commission should make it clear that non-rural carriers in a state where the commission is unwilling to so certify would receive no federal funding. Further, as described by the Joint Board, where urban and rural rates are not reasonably comparable -- thus where the

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<sup>37</sup> Recommended Decision, ¶ 50. The Joint Board recommends that “high-cost areas be defined as all wire centers with a line density of less than 540 lines per square mile.” *Id.* “Wire centers with fewer than 540 lines per square mile are above the national average cost, and those with more than 540 lines per square mile are below the national average cost....” *Id.*, n. 125. The use of a single dividing line implies that everything above the average cost is high cost and everything below is low cost. The Act requires a comparison of rural rates to urban rates. 47 U.S.C. § 254(b)(3). Commenters have recognized that these two classifications do not occupy the field, and that there are “suburban” areas that are not rural or urban. Equally, there are “high cost” areas, there are “low cost” areas, and there are areas that lie between. The Commission should determine a differentiation that does not assume that everything above the average is high cost. See Joint Advocates Comments at 3.

<sup>38</sup> *Id.*, ¶ 55.

state commission is *unable* to certify -- the state commission must describe the means it is undertaking to bring urban and rural rates within the comparability range, or the need for additional federal assistance to do so.<sup>39</sup>

As a crucial means for establishing that the USF is sufficient, but no more than sufficient, the certification must include a statement that without the federal support, the state would be unable to ensure that rates in rural areas served by non-rural carriers are reasonably comparable to urban rates. Also for this purpose, the certification should include a statement of the intrastate or total company return on equity earned by the non-rural carrier. As discussed above, a carrier that is earning a healthy return should not require support from the federal fund to ensure that its rural rates are reasonably comparable to its urban rates. The state-level certification should be reviewed in context with the Commission's information on interstate or total company returns.

Consistent with the discussion above that "reasonably comparable" must include consideration of service quality, the state certification must also include these issues. The state should be required to certify that the services provided in rural areas are reasonably comparable to those in urban areas, and that the service quality in both areas is adequate and reasonably comparable.

## 2. Rate Benchmark

In order to determine reasonably comparable rates in rural areas, the Joint Board tentatively recommended use of a rate benchmark of 135% of the national average urban rate.<sup>40</sup> As previously mentioned, NASUCA supports adoption of a 135% rate

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<sup>39</sup> See *id.*

<sup>40</sup> This national urban rate of \$22.34 per month was based on the FCC's annual survey of urban residential rates. Recommended Decision, ¶52.

benchmark. The 10<sup>th</sup> Circuit has already expressed doubt that rate differentials between urban and rural areas in the range of 70% to 80% can be considered comparable.<sup>41</sup>

A rate benchmark of 135% recognizes that rates for reasonably comparable services in rural areas may be somewhat higher than rates in urban areas, but that rural rates for such services above this point would be outside a “fair range” of rates. Indeed, under the Joint Board’s recommendation, customers in rural areas will potentially pay rates for reasonably comparable basic service that are up to \$7.82 per month higher than the national average urban rate.<sup>42</sup> Monthly rate differentials greater than this could not be found to be “reasonably comparable.” At same time, adoption of a 135% rate benchmark will not place additional immediate pressure on the size of the federal universal service fund, but will provide a safety net for consumers as telecommunications competition continues to develop in unexpected ways. The Commission should adopt the 135% rate benchmark recommended by the Joint Board.

### 3. Basic Service Rate Template

The Joint Board has proposed a “Basic Service Rate Template” for states to use to compare rates.<sup>43</sup> The rate template is expansive, and properly includes all rates and charges that a customer must actually pay in order to receive basic monthly telephone service.<sup>44</sup> However, the rate template fails to include a factor that the Joint Board itself

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<sup>41</sup> *Qwest*, at 1201.

<sup>42</sup> The rate benchmark of \$30.16 per month minus the national average urban rate of \$22.34 per month equals \$7.82 per month. Recommended Decision, ¶52, n. 131.

<sup>43</sup> *Id.*, ¶ 54.

<sup>44</sup> In this regard the benchmark proposed by the Joint Board is far superior to a rate benchmark based on the GAO report that includes only basic rates. *Id.*, ¶48. The GAO report ignores rate surcharges such as the subscriber line charge, local number portability charge, and 911 fees which must be paid by customers each month in order to obtain basic service.



recognizes may need to be addressed in order to make rates reasonably comparable: the local calling area.<sup>45</sup> As part of the certification process, the states should also be required to certify that the local calling areas of rural exchanges are reasonably comparable to the local calling areas enjoyed in the states' urban areas.<sup>46</sup>

The Basic Service Rate Template for rural and urban areas within the state -- including local calling areas -- should be included in the state certification filed with the Commission. In order to make this information more useful -- for the Commission, state regulators, the industry and consumer advocates alike -- the data should be combined by the Commission and made public in a uniform format.

### **III. CONCLUSION**

The definitions and measures outlined in these comments should tend to limit the size of the non-rural company high-cost fund. The state inducement mechanism -- as recommended by the Joint Board and as modified herein -- will be the centerpiece in that effort. These companies -- and the states in which they serve -- should have the capability to produce rural rates and services that are reasonably comparable to those found in urban areas. The requirement that states certify the reasonable comparability of services within their borders should ensure that federal support is targeted where it is needed.

In the end, however, it must be recognized that the non-rural carrier high-cost fund, at \$233 million, is 7.5% of the total federal high-cost fund and 3.9% of the \$6

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<sup>45</sup> Recommended Decision, ¶ 50.

<sup>46</sup> The typical urban local calling area in the state (as determined by access lines reachable as a local call, mileage reachable as a local call, and other relevant factors) should be the standard.

billion federal USF.<sup>47</sup> Vigilance on the non-rural high-cost fund will be unavailing if there is not concurrent oversight on the other fund segments. The Commission should, in the near future, conduct a “management performance audit” of the entire fund, in order to ensure that the mechanisms are working as intended.<sup>48</sup>

The Joint Board has struggled to reach its recommendations, as signaled by the variety of the separate statements prepared by the members of the Joint Board. Those members should be commended for their efforts. Yet the Commission must build on the Joint Board’s recommendations, as described here in NASUCA’s comments, in order to meet the terms of the remand from the 10<sup>th</sup> circuit.

Respectfully submitted,

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<sup>47</sup> See footnote 24, *supra*.

<sup>48</sup> This may alleviate some of the concerns seen in the USF Contribution Mechanism portion of this proceeding about the sustainability of the funding mechanism. See *Report and Order and Second Further Notice of Proposed Rulemaking* (rel. December 13, 2002), ¶ 3.

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# Information on Non-Rural Carriers

<u>State</u>	<u>Non Rural Carrier</u>	<u>Interstate Rate of Return Year 2001</u>	<u>High Cost Funding 1Q2003</u>	<u>Percent of State Access Lines Served</u>
Alabama	BellSouth	14.12%	\$10,931,901	89.90%
Florida	BellSouth	24.79%	\$1,772,163	60.37%
Georgia	BellSouth	17.33%	\$3,693,024	96.32%
Kentucky	BellSouth	20.15%	\$2,484,225	62.16%
Louisiana	BellSouth	23.95%	\$2,608,518	100.00% fn 1
Mississippi	BellSouth	16.03%	\$29,117,493	100.00% fn 1
North Carolina	BellSouth	18.11%	\$2,710,929	55.14%
South Carolina	BellSouth	16.95%	\$1,452,108	90.43%
Tennessee	BellSouth	17.58%	\$1,216,095	94.97%
Arizona	Qwest	20.21%	\$3,117,027	99.70%
Colorado	Qwest	20.01%	\$3,911,946	100.00%
Idaho	Qwest	27.67% - fn 2	\$0	80.63%
Iowa	Qwest	24.20%	\$254,337	100.00%
Minnesota	Qwest	21.29%	\$0	100.00%
Montana	Qwest	21.68%	\$2,660,556	100.00%
North Dakota	Qwest	21.48%	\$151,437	61.78%
Nebraska	Qwest	24.67%	\$361,257	100.00%
New Mexico	Qwest	41.22%	\$683,565	100.00%
Oregon	Qwest	24.24%	\$1,272,987	71.33%
South Dakota	Qwest	20.19%	\$20,295	100.00%
Utah	Qwest	19.67%	\$347,433	100.00%
Washington	Qwest	24.65%	\$0	71.09%
Wyoming	Qwest	27.71%	\$4,192,659	100.00%
Arkansas	SBC	23.36%	\$1,547,196	100.00%
California	SBC	23.36%	\$519,951	78.75%
Connecticut	SBC	23.19%	\$183,474	97.68%
Illinois	SBC	23.81%	\$0	87.85%
Indiana	SBC	24.81%	\$0	63.27%
Kansas	SBC	29.31%	\$147,726	99.50%
Michigan	SBC	30.27%	\$0	85.67%
Missouri	SBC	21.89%	\$841,557	79.46%
Nevada	SBC	20.07%	\$902,166	27.92%
Ohio	SBC	23.79%	\$0	60.14%
Oklahoma	SBC	24.18%	\$1,086,735	100.00%
Texas	SBC	15.52%	\$0	79.08%
Wisconsin	SBC	25.69%	\$0	83.14%

Delaware	Verizon	14.63%	\$90,489	100.00%
District of Columbia	Verizon	16.73%	\$0	100.00%
Maryland	Verizon	13.67%	\$852,207	100.00%
Maine	Verizon	22.30%	\$1,381,317	100.00%
Massachusetts	Verizon	11.67%	\$30,978	100.00%
New Hampshire	Verizon	15.30%	\$1,254,789	100.00%
New Jersey	Verizon	17.81%	\$0	96.61%
New York	Verizon	3.68%	\$2,222,541	93.00%
Pennsylvania	Verizon	18.96%	\$0	78.90%
Rhode Island	Verizon	13.50%	\$8,274	100.00%
Vermont	Verizon	16.69%	\$2,766,639	100.00%
Virginia	Verizon	21.63%	\$2,890,800	76.78%
West Virginia	Verizon	26.97%	\$10,374,987	100.00%

Footnote 1 - ARMIS Report 43-08, Table III shows Bell South LA & MS access lines served as greater than the overall total state access lines as shown on FCC - Table 2.4

Footnote 2 - The ROR as shown is an average of Idaho North and Idaho South.

Source:

- 1) FCC-State Link - Common Carrier Bureau - Industry Analysis Division  
[www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/fcc-link.html](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/fcc-link.html)
- 2) ARMIS Report 43-01: Table 1. Cost and Revenue Table, and ARMIS Report 43-08: Table III. Access Lines in Service by Customer  
<http://gulfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.htm>
- 3) USAC High Cost Support Mechanism  
<http://www.universalservice.org/overview/filings>
- 4) FCC-State Link - Statistics of Communications Common Carriers, Table 2.4 - Access Lines by Type of Customer for Reporting Incumbent Local Exchange Carriers as of December 31, 2001, and Table 2.6 - Operating Statistics of Reporting Incumbent Local Exchange Carriers as of December 31, 2001